

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW-1

THIRD MOTION IN LIMINE

Defendant Devin Sizemore, by and through his assigned counsel, and pursuant to Local Criminal Rule 12.1(E), moves this Court for an order precluding the government from introducing and publishing prejudicial images and videos of the decedent, Emily Sizemore.

Although the government has not yet informed defense counsel which, if any videos or photographs showing Emily Sizemore it will seek to introduce, Defendant files this motion early out of an abundance of caution to inform the Court that the admissibility of certain evidence may be an issue at trial.

Given that the status of Emily Sizemore is known (decedent), as well as the cause of death (drowning), the government should be precluded from introducing video or photographic evidence of the

decedent or parts of her body at the scene, during her transport to the hospital, or during her evaluation by hospital personnel or the medical examiner that are unduly gruesome and unfairly prejudicial. *See United States v. Soundignsides*, 820 F.2d 1232 (10th Cir. 1987); *United States v. Naranjo*, 710 F.2d 1465, 1469 (10th Cir. 1983) (discussing proper purposes for which “death photographs” may be introduced); Fed. R. Evid. 401, 402, 403.

February 21, 2022

Respectfully submitted,

/s/

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Certificate of Electronic Filing and Service

This is to certify that on this 21st day of February, 2022, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to Rebecca Dunnan, AUSA, and to all counsel of record. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/

Lisa A. Peebles
Federal Public Defender